

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

In re:)
)
)
RICHARD BERNARD MILLER, SR) Case No. B-08-50303 C-13W
)
Debtor.)

MOTION TO DISMISS APPEAL

Now comes Kathryn L. Bringle, Chapter 13 Trustee ("the Appellee"), through counsel, who moves the Court to dismiss the Debtor's Appeal of the Order entered by the United States Bankruptcy Court on March 26, 2008 granting relief from the Automatic Stay and Co-Debtor Stay to allow the Forsyth County Tax Collector to proceed with an execution sale against a 2.16 acre tract of real property located on Shiloh Church Road in Forsyth County, North Carolina. In support of the Trustee's motion to dismiss the appeal, the Trustee respectfully shows the following:

1. Richard Bernard Miller, Sr. ("the Appellant") filed a Voluntary Petition pursuant to Chapter 13 of Title 11 of the United States Code on February 26, 2008.

2. Mr. Miller has filed four prior Chapter 13 cases as follows:

<u>File No.</u>	<u>Date Filed</u>	<u>Disposition of Case</u>
88-02293	10/27/88	Dismissed 2/26/90
92-10609	2/6/92	Dismissed prior to confirmation on 5/1/92
04-52711	9/17/04	Converted to Chapter 7 proceeding on 1/12/05 and dismissed on June 21, 2005 for failure of the Debtor to attend the Creditors' Meeting
07-52051	12/28/07	Dismissed prior to confirmation 1/24/08

3. Mr. Miller filed his most recent Petition Pro Se without the assistance of Counsel.

4. In the present case, Mr. Miller has not attended the First Meeting of Creditors and has not made any payments into the Chapter 13 Plan.

5. Because of this default in plan payments and because the Debtor has failed to attend the First Meeting of Creditors, the Trustee has filed a motion to dismiss the Debtor's Chapter 13 case. The hearing on the Trustee's motion to dismiss the case is set for July 16, 2008.

6. It appears that Mr. Miller filed this most recent Chapter 13 case only to delay and hinder the Forsyth County Tax Collector from proceeding with an execution sale on the aforementioned real property on Shiloh Church Road. It further appears that Mr. Miller had no intention of tendering the necessary payments to the Trustee to fund his Plan.

7. Mr. Miller filed a Notice of Appeal of the March 26, 2008 Order granting relief from the automatic stay on April 4, 2008. It appears that this Appeal was but another tactic by Mr. Miller to delay the sale.

8. Rule 8006 of the Federal Rules of Bankruptcy Procedure requires that the Appellant file with the Clerk and serve on the Appellee a designation of the items to be included in the record on appeal and a statement of the issues to be presented within 10 days after filing the Appeal. The proposed designation of the record on appeal and statement of issues was required to be filed and served by April 14, 2008. The Appellant has not filed the proposed record on appeal, nor has he filed a statement of the issues to be presented on appeal.

9. The Appellant did not seek a ruling from the Bankruptcy Court staying the operation of the Order pending the Appeal pursuant to Rule 8005 of the Federal Rules of Bankruptcy Procedure. Consequently, the sale of the property went forward and has been concluded. The final sale has been confirmed by Order of North Carolina Superior court Judge L. Todd Burke on or about May 20, 2008 in the case of Forsyth County, North Carolina and the City of Winston-Salem vs. Richard B. Miller et al 04 CVS 1450. The completion of the sale of the property renders this Appeal moot.

10. For these reasons, the Appellee respectfully requests that the Appellant's Appeal should be dismissed.

WHEREFORE, the Appellee respectfully prays that the Court dismiss the Appeal of the Bankruptcy Court's Order granting relief from the automatic stay.

Date: May 21, 2008
KLB/VJC/ae

s/ Vernon J. Cahoon
Chapter 13 Staff Attorney

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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that the attached Motion was served on the following parties by mailing a copy of the same by first-class postage pre-paid mail addressed as follows:

RICHARD BERNARD MILLER SR
115 N GORDON DRIVE APT #2
WINSTON SALEM NC 27104

MICHAEL D. WEST
BANKRUPTCY ADMINISTRATOR
PO BOX 1828
GREENSBORO, NC 27402

R BRANDT DEAL
2990 BETHESDA PLACE
SUITE 605-C
WINSTON SALEM NC 27103

Date: May 21, 2008
KLB/VJC/ae

s/ Vernon J. Cahoon
Chapter 13 Staff Attorney